

## INSURANCE DIVISION[191]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 516E.7, the Insurance Division (the Division) hereby gives Notice of Intended Action to rescind Chapter 23, “Motor Vehicle Service Contracts,” and adopt new Chapter 104, “Motor Vehicle Service Contracts,” Iowa Administrative Code.

Proposed new Chapter 104 is intended to implement Iowa Code chapter 516E and to comply with Iowa Code section 17A.7(2). The proposed new chapter updates provisions in existing Chapter 23 including, among other things, procedures allowing more electronic administration of Iowa Code chapter 516E and the associated rules.

The Division intends that these amendments shall go into effect November 2, 2016.

Any interested person may make written suggestions or comments on this proposed new chapter on or before August 23, 2016. Such written materials should be directed to Rosanne Mead, Iowa Insurance Division, Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail [rosanne.mead@iid.iowa.gov](mailto:rosanne.mead@iid.iowa.gov).

Also, there will be a public hearing on August 23, 2016, at 3 p.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Division’s general waiver provisions in 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

After review and analysis of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 516E.

The following amendments are proposed.

ITEM 1. Rescind and reserve **191—Chapter 23**.

ITEM 2. Adopt the following new 191—Chapter 104:

#### CHAPTER 104

#### MOTOR VEHICLE SERVICE CONTRACTS

**191—104.1(516E) Purpose.** This chapter is promulgated to implement and administer the provisions of Iowa Code chapter 516E, which regulates the sale of motor vehicle service contracts.

#### **191—104.2(516E) Applicability and definitions.**

**104.2(1) Applicability.** This chapter shall apply to the following:

- a. Any person who issues motor vehicle service contracts in this state, i.e., the obligor under the motor vehicle service contract.
- b. Any person who offers or sells a motor vehicle service contract in this state, such as automobile dealers and financial institutions.
- c. Third-party administrators, as defined in Iowa Code section 516E.1(15), administering motor vehicle service contracts or claims.
- d. Motor vehicle service contract reimbursement insurance policies and surety policies issued in this state by an insurer.

**104.2(2) Definitions.** The definitions in Iowa Code section 516E.1 are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“*Division*” shall mean the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 516E.

“*Division’s Web site*” shall mean the Web site of the Iowa insurance division, [www.iid.iowa.gov](http://www.iid.iowa.gov).

**191—104.3(516E) Annual registration of service companies and providers.**

**104.3(1) Registration of a service company.** In order for a service company to be permitted to issue a service contract or arrange to perform services pursuant to a service contract each year, no later than August 1, the service company shall do all of the following using forms and instructions available on the division’s Web site:

- a. File an application for registration with the division, pursuant to Iowa Code section 516E.2(2).
- b. Provide documentation demonstrating that the service company has financially secured its service contracts in compliance with Iowa Code section 516E.3(1) “a,” 516E.4 or 516E.21.
- c. File a consent to service of process on the commissioner, pursuant to Iowa Code section 516E.3(1) “b.”
- d. Provide to the division other information the division requires, pursuant to Iowa Code section 516E.3(1) “b.”
- e. Pay a registration fee of \$500 to the division, as required by Iowa Code section 516E.2, and other fees or payments as required by the division in the instructions.

**104.3(2) Registration of a provider.** Each year, no later than August 1, a provider shall do all of the following using forms and instructions available on the division’s Web site:

- a. File a notice with the division, as required by Iowa Code section 516E.3(2) “a.”
- b. File a consent to service of process on the commissioner, pursuant to Iowa Code section 516E.3(2) “a.”
- c. Provide to the division other information the division requires, pursuant to Iowa Code section 516E.3(2) “a.”
- d. Pay a notice filing fee of \$100 to the division, as required by Iowa Code section 516E.3(2) “a,” and other fees or payments as required by the division.

**104.3(3) Prompt filing of changes in information.**

a. Pursuant to Iowa Code section 516E.3(1) “c” or 516E.3(2) “b,” a service company or a provider shall promptly file the following information with the division:

- (1) Any change in the name or ownership of the service company or provider.
- (2) Notice of the termination of the service company’s or provider’s business.
- (3) If material amendments have been made to any of the documents filed with the division pursuant to Iowa Code section 516E.3(1) “b” or 516E.3(2) “a,” copies of those amended documents.

b. The division shall not charge a filing fee for interim filings made pursuant to this subrule to keep the materials previously filed with the division current and accurate.

**191—104.4(516E) A service company’s filing of service contracts.**

**104.4(1)** Pursuant to Iowa Code section 516E.3(1) “a,” a service company shall file with the division a true and correct copy of each service contract prior to issuing, selling or offering the service contract for sale in Iowa. The service company shall submit to the division \$10 for each service contract filed.

**104.4(2)** If material amendments, including any new riders, attachments, addenda or the like, have been made to any of the documents filed with the division pursuant to Iowa Code section 516E.3(1) “b,” a service company shall promptly file copies of those amended documents. The division shall not charge a filing fee for interim filings made to keep the materials previously filed with the division current and accurate.

**104.4(3)** Copies of all required forms, procedures and instructions can be found on the division’s Web site. Required fees and other payments are described in the instructions.

**104.4(4)** A motor vehicle service contract form filed pursuant to Iowa Code section 516E.3 may be used in this state immediately after the contract form has been filed with the division.

**191—104.5(516E) A service company's use of surety bond in lieu of reimbursement insurance policy.**

**104.5(1)** In lieu of obtaining a reimbursement insurance policy as required by Iowa Code section 516E.2, a service company may file with the division a surety bond. The surety bond shall be in the form as directed by the division and as available on the division's Web site.

**104.5(2)** A surety bond claimant, for purposes of this rule, includes any service contract holder whose service contract predates the effective date of the surety bond or was executed during the surety bond's period of coverage and whose service contract has not been rescinded, fulfilled, or secured by another bond or by other insurance.

**104.5(3)** Except as provided in Iowa Code section 516E.4 and subrule 104.5(6), no suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

**104.5(4)** Any surety bond claimant as set forth in subrule 104.5(2) may maintain an action on the surety bond. A surety's aggregate liability shall not exceed the penal sum of the bond.

**104.5(5)** A surety shall not cancel a surety bond except upon written notice of cancellation given by the surety to the division by certified mail. The effective date of the cancellation shall not be less than 60 days after the division receives the surety's notice. The surety shall specify the reason for the cancellation.

**104.5(6)** The surety shall not be liable for any surety bond claim related to the service company's insolvency or cessation of business unless the surety claim is made within five years of the date of insolvency or business cessation.

**104.5(7)** If the surety notifies the service company that the surety intends to cancel a surety bond, the service company, within 30 days, shall submit to the division a substitute surety bond or reimbursement insurance policy.

**104.5(8)** A service company seller shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy. The surety bond amount shall be calculated based on the value of the service contracts sold and not performed or canceled and for which no trust fund or insurance is in place.

**191—104.6(516E) Costs of audits and examinations.** When the commissioner chooses to conduct an audit or examination pursuant to Iowa Code section 516E.14, 516E.21(1) "d," or 516E.11(1) "c," the actual costs of the audit or examination shall be borne by the provider, service company, or third-party administrator being audited or examined. The provider, service company, or third-party administrator may request that the division waive all or part of the costs.

**191—104.7(516E) Prohibited acts.**

**104.7(1)** *Unfair or deceptive trade practices involving used or rebuilt parts.*

*a. Used parts.* A motor vehicle service contract provider shall not use used parts to repair a motor vehicle covered by a motor vehicle service contract without prior written authorization by the vehicle owner, except as provided in paragraph 104.7(1) "b."

*b. Rebuilt parts.* A motor vehicle service contract provider shall not use rebuilt parts to repair a motor vehicle covered by a motor vehicle service contract unless all of the following are true:

- (1) The parts have been dismantled and reconstructed as necessary.
- (2) All of the internal and external parts have been cleaned and made free from rust and corrosion.
- (3) All impaired, defective, or substantially worn parts have been restored to a sound condition or replaced with new, rebuilt, or unimpaired used parts.
- (4) All missing parts have been replaced with new, rebuilt, or unimpaired used parts.
- (5) All rewinding or machining or other necessary operations have been performed.

(6) The rebuilt parts have been put in working condition, using, as minimum standards, the manufacturer's performance specifications in existence when the parts were originally manufactured if those specifications are publicly available.

**104.7(2)** *Unfair discrimination or trade practices.* A motor vehicle service contract or provider shall not make or permit any unfair discrimination between individuals of the same class in the rates charged for any contract, or in any other manner.

**191—104.8(516E) Violations.** Failure to comply with this chapter or with Iowa Code chapter 516E shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 516E.

These rules are intended to implement Iowa Code chapter 516E.